

Supreme Court, U. S.

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I: The

Supreme Court of the United States

October Term, 1977

No. 77-1548

SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, LOCAL NO. 3,

Petitioner,

vs.

SIEBLER HEATING & AIR CONDITIONING, INC.,
INTERSTATE SHEET METAL, INC., DONOVAN
BROTHERS, INC., SCHNEIDERWIND HEATING &
AIR CONDITIONING CO., WALT COZIAHR HEAT-
ING & AIR CONDITIONING CO., FISHER HEATING
& AIR CONDITIONING CO., NELSON HEATING &
AIR CONDITIONING CO., ROBERTS SHEET METAL
CO., and FRAZIER-SCHURKAMP, INC.,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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**BRIEF OF RESPONDENTS IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

Respondents pray that the Court deny the petition
for a writ of certiorari to review the opinion and judg-
ment of the United States Court of Appeals for the
Eighth Circuit entered in *National Labor Relations Board
v. Siebler Heating & Air Conditioning, Inc., et al.*, 563 F.
2d 366 (8th Cir. 1977), on October 11, 1977.

STATEMENT OF THE CASE

Respondents will accept, for the purpose of the petition filed herein, Petitioner's Statements of Opinions Below, Jurisdiction, Questions Presented, and Statutes Involved, and would note to the Court that the National Labor Relations Board has not filed a petition for certiorari. Respondents would also, for the purpose of this petition, accept generally Petitioner's Statement of the Case, as supplemented by facts set forth in the circuit court's decision (A. 44).

REASONS FOR DENYING THE WRIT

1. The decision below is not in conflict with a decision of this Court.

Respondents submit there is no language in *N. L. R. B. v. Truck Drivers Union*, 353 U. S. 87 (1957), or any other decision of this Court, with which the circuit court's decision is in conflict. The circuit court's decision was an appropriate exercise of its judicial review function expressly recognized by this Court.

Petitioner suggests that the courts must defer to the Board general rules in this matter. The Board's rule in *Retail Associates, Inc.*, 120 N. L. R. B. 388 (1958), recognizes withdrawal for unusual circumstances. There were unusual circumstances present in this case.

2. The decision below is not in conflict with that of another United States Court of Appeals.

The circuit court expressly recognized the decision in *N. L. R. B. v. Tulsa Sheet Metal Works, Inc.*, 367 F. 2d 55 (10th Cir. 1966), and found it distinguishable. There were no circumstances in the Tenth Circuit case relating to the bargaining relationship between the employer group and its members.

On the other hand, the circuit court found support for its decision in the Seventh Circuit decision, *N. L. R. B. v. Unelko Corp.*, 478 F. 2d 1404, 83 L. R. R. M. 2447 (7th Cir. 1973), as well as in prior Board decisions cited (A. 54-55).

3. This case does not present an important question of federal law which should be settled by this Court.

The circuit court was careful to note that it recognized the importance of multi-employer bargaining (A. 56). It has not eroded the concept. This was simply a case in which the circuit court found the Board's finding of no unusual circumstances in error. The Board itself has not sought review of that decision.

The circuit court's decision is not contrary to national labor policy and raises no issue significant enough to justify a grant of the writ.

CONCLUSION

Respondents respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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